UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IDS PROPERTY CASUALTY INSURANCE COMPANY,

Plaintiff,

-against-

MARK BURTON and DENNIS T. FENNEL,

Defendants.

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BURTON'S ANSWER

11-CV-0026(KMK)

Defendant, Mark Burton, by his attorneys, MacCARTNEY, MacCARTNEY, KERRIGAN & MacCARTNEY, answering the amended declaratory judgment complaint of the plaintiff herein, respectfully shows to the Court and alleges:

ANSWERING THE ALLEGATIONS ENTITLED
JURISDICTION AND VENUE

FIRST: Answering the paragraphs of the amended declaratory judgment complaint marked "1", "3", "4" and "5", the defendant, Mark Burton, denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth therein.

ANSWERING THE ALLEGATIONS ENTITLED
STATEMENT OF THE CASE

SECOND: Answering the paragraphs of the amended declaratory judgment complaint marked "7", "8" and "9", the defendant, Mark Burton, denies each and every allegation set forth therein.

THIRD: Answering the paragraphs of the amended declaratory judgment complaint marked "10", "11" and "12", the defendant, Mark Burton, denies each and every allegation set forth therein, except admits that defendant made payments to Dennis T. Fennel as restitution.

FOURTH: Answering the paragraphs of the amended declaratory judgment complaint marked "15", "16", "17", the defendant, Mark Burton, denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth therein.

ANSWERING THE ALLEGATIONS DENOMINATED AS COUNT I

FIFTH: Answering the paragraph of the amended declaratory judgment complaint marked "18" the defendant, Mark Burton, repeats, reiterates and realleges each of his answers to paragraphs of the complaint marked "FIRST" through "SEVENTEENTH" with the same force and effect as though more full set forth at length herein.

SIXTH: Answering the paragraphs of the amended declaratory judgment complaint marked "19" and "20", the

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defendant, Mark Burton, denies knowledge or information sufficient to form a belief as to the truth of each and every allegation set forth therein.

SEVENTH: Answering the paragraph of the amended declaratory judgment complaint marked "21", the defendant, Mark Burton, denies each and every allegation set forth therein.

ANSWERING THE ALLEGATIONS DENOMINATED AS COUNT II

EIGHTH: Answering the paragraph of the amended declaratory judgment complaint marked "22" the defendant, Mark Burton, repeats, reiterates and realleges each of his answers to paragraphs of the complaint marked "NINETEEN" through "TWENTY-ONE" with the same force and effect as though more full set forth at length herein.

NINTH: Answering the paragraphs of the amended declaratory judgment complaint marked "23" and "24", the defendant, Mark Burton, denies each and every allegation set forth therein.

ANSWERING THE ALLEGATIONS DENOMINATED AS COUNT III

TENTH: Answering the paragraph of the amended declaratory judgment complaint marked "25" the defendant, Mark Burton, repeats, reiterates and realleges each of his answers to paragraphs of the complaint marked "TWENTY-THREE" and "TWENTY-

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FOUR" with the same force and effect as though more full set forth at length herein.

ELEVENTH: Answering the paragraph of the amended declaratory judgment complaint marked "26, the defendant, Mark Burton, denies each and every allegation set forth therein.

AS AND FOR A FIRST DEFENSE

TWELFTH: The plaintiff has failed to timely disclaim insurance coverage to this defendant.

AS AND FOR A SECOND DEFENSE

THIRTEENTH: The plaintiff has assumed control over the defense of the New York State Court action described in Paragraphs "13" and "14" of plaintiff's complaint and plaintiff should be precluded and estopped in equity from denying coverage, a defense, and indemnity to this defendant.

AS AND FOR A COUNTERCLAIM

FOURTEENTH: The plaintiff has cast this defendant in a defensive position by commencing this suit and this defendant counterclaims for his costs and attorney's fees in amounts to be determined upon the completion of this action.

WHEREFORE, the defendant, MARK BURTON, demands judgment dismissing in its favor and against plaintiff, on its counterclaim, together with such other and further relief as the Court deems just and proper.

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NYACK, NEW YORK 10960

Dated: Nyack, New York
January 27, 2011

MacCARTNEY, MacCARTNEY,
KERRIGAN & MacCARTNEY

BY: ______________________
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